IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1101 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARSOTAM @ PANCHABHAI JIAVABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1101 of 1999

MS SADHANA SAGAR for Petitioner No. 1

THROUGH JAIL for Petitioner No. 1

Ms. N V Joshi, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/03/2003

ORAL JUDGEMENT

This is an appeal under section 374 of the Criminal Procedure Code, 1973 challenging the judgment and conviction order dated 7.9.1999 recorded by the

learned Addl.Sessions Judge, Rajkot in Sessions Case No. 122/99 under which the learned Judge convicted the present appellant for an offence punishable under section 376 read with section 511 of the Indian Penal Code and sentenced him to suffer R.I. for three years. The learned trial Judge also directed to pay fine of Rs.250/-. In default of payment of fine, the appellant was directed to undergo further S.I. for one month. The appellant was also tried for offence punishable under section 342 of IPC but he was acquitted of the said offence.

2. The prosecution case against the appellant was that on 2.10.1998 at about 10 a.m., the present appellant brought one Salmaben, daughter of Mumtazben in his room and committed an attempt of rape on her at Rajkot. It seems that before the appellant could commit the said offence, the victim Salmaben raised shouts and, therefore, many persons gathered together and the room was opened and the victim was brought out of the said room. FIR was filed and investigation was undertaken. At the end of investigation, charge sheet was filed and thereafter, the case was committed to the court of Sessions. The learned Addl.Sessions Judge convicted the appellant after recording evidence and after hearing the appellant on the quantum of punishment, the aforesaid order of sentence was passed by the learned Addl.Sessions Judge. Feeling aggrieved by the said judgment and conviction order of the trial court, the appellant has preferred this appeal before this court. It has been mainly contended here that the prosecution has fabricated the story of attempting to commit rape on the victim. The evidence on record was not sufficient to convict the appellant and, therefore, the trial court has committed error in the eye of law in convicting the appellant and, therefore, the appeal be allowed and the appellant be acquitted of the offence in question.

3. The appeal was admitted and Ms. Sadhna Sagar, learned Advocate represented the appellant as amicus curiae. I have heard Ms. Sadhna Sagar, learned Advocate for the appellant and Ms. N V Joshi, learned APP for the State. It appears from the record that the prosecution has examined so many witnesses in support of the case of the prosecution. The trial court has enlisted the evidence on record in para 4 of the judgment. From there it can be gathered that the trial court has examined Mumtazben at Exh.9, Salma at Exh.13, Kanuben Punabhai, Exh.15, Dineshchandra Hiralal at Exh.16 and Dr.Ashok Bhatt at Exh.6. The prosecution also produced on record of the trial court the yadi Exh.7, Medical certificate

Exh.8, FIR Exh.10 etc.

4. Now, so far as the age of the victim is concerned, the trial court has considered the relevant evidence and has recorded the finding of fact that the victim Salmaben was aged about six years at the time of the commission of offence. Mumtazben at Exh.9 has given evidence to that effect and her evidence has not been seriously challenged on that aspect of the case and therefore, considering the evidence on record, the trial court was justified in holding that Salmaben, the victim was between the age of 6 to 10 years at the time of the commission of offence. So far as the evidence with respect to the actual act is concerned, the victim has given evidence and her evidence has been supported by informant-Mumtazben and they both have stated that the appellant had taken the victim to his room and was made to lie down on a cot and attempted to commit rape on her. The victim as well as Mumtazben at Exh.9 both have consistently given the said version. In fact, Mumtazben reached the spot and found presence of the victim and the appellant both at the spot. The said evidence is supported by medical evidence and other witnesses also supported the prosecution.

5. In above view of the matter, the trail court has relied upon the evidence tendered by Salmaben and Mumtazben. Considering the evidence given by them and considering the cross-examination of these two witnesses, it can be said that the trial court was perfectly justified in depending on the evidence of the said two witnesses. After all these two witnesses were the neighbour of the appellant and there was no reason for these two witnesses to fabricate the story against the appellant, particularly the victim Salmaben had absolutely no reason to make false allegation against the present appellant. She was hardly six to seven years of age at the time of the offence in question and no enmity has been alleged against the appellant. Looking to the evidence on record, I am of the view that the trial court was justified in holding the appellant guilty for the aforesaid offence and no case is made out for interference with the findings of fact recorded on the basis of the evidence of the witnesses. Therefore, there is no substance in the appeal and consequently the appeal is ordered to be dismissed. The impugned judgment and conviction order passed by the trial court are confirmed. It is stated that the appellant has served out the sentence.

11.3.2003 [D P Buch, J.]

msp